IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8493 of 2000
With
CIVIL APPLICATION No. 5097 of 2004
In
SPECIAL CIVIL APPLICATION No. 8493 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SBI & 1 - Petitioner(s)
Versus
TM SOLANKI, EX-EMPLOYEE OF SBI, - Respondent(s)

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Appearance :
MR PRANAV G DESAI for Petitioner(s) : 1 - 2.
MR NILESH A PANDYA for Respondent(s) : 1,
M/S ANAND ADVOCATES for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 25/07/2007

ORAL JUDGMENT

Shri Pranav G. Desai, learned counsel for the petitioners; Shri Nilesh A. Pandya, learned counsel for the respondent.

2. The petitioners being aggrieved by the order/award dated 21st February, 2000 passed by the Industrial Court No.3 in Reference [I.T.] No. 2/99, are before this Court with a submission that the award made by the Industrial Court is patently illegal and deserves to be quashed and set aside.

3. The short facts necessary for disposal of the present writ application are that the petitioner bank, in accordance with the service rules, issued a charge sheet upon the respondent workman, wherein, various allegations were made. After receiving the charge sheet, the respondent workman pleaded guilty but however, prayed for clemency and mercy. The bank, after taking lenient view, however, without any inquiry, directed; “to condone your misconduct and discharge from services in the bank with immediate effect protecting your terminal benefits as a very special case”. The

respondent, being dissatisfied by the said order, preferred an appeal as provided under the rules/regulations. The appellate authority, that is, the Deputy General Manager, vide his order dated 14th March, 1995, allowed the appeal and remanded the matter back to the disciplinary authority with a direction that in accordance with the rules/regulations governing the service conditions and departmental inquiry, an inquiry must be held. The said order passed by the appellate authority was received well by both the sides. The respondent who could secure an order in his favour was happy and content and never challenged the appellate order before any authority with a submission that in accordance with Shastri Award, the appellate authority was not entitled to remand the matter back to the disciplinary authority.

4. After the remand, the parties were given appropriate opportunity to lead the evidence. The petitioner bank led evidence but this time, again the respondent accepted his guilt and submitted to the authority that lesser

punishment be awarded. It would be worth noting that following were the charges against the present respondent-workman:-

> *"Charge No.1:*
> *While working as Clerk-Typist-cum-Cashier at our Padra Branch from 1.6.1991 to 28.11.1992, Shri Solanki negotiated cheques at our Padra Branch on various occasions drawn on his accounts maintained at Branches of other Banks, knowing fully well that sufficient balances were not there in these accounts at the negotiating/material time. Shri Solanki misled the authority by negotiating majority of the cheques in small amounts of Rs. 2500/- to avoid getting authorisation of appropriate authority. By doing so Shri Solanki have defrauded the Bank.*
> *Charge No.2:*
> *Shri Solanki violated Service Rules by opening accounts at various branches of other Banks at various places to facilitate himself for committing the fraud.*
> *Charge No.3:*
> *At the material time Shri Solanki was working as Dispatch Clerk at our Padra Branch and therefore Shri Solanki have surreptitiously removed the*

instruments/cheques and replaced them with some innocuous documents and covers containing the innocuous documents were dispatched by him, as none of these instruments/cheques could be realized by the Bank nor received back unpaid, and it has been revealed that none of the cheques/instruments drawn and negotiated by him were found in the covers at the receiving end.

Charge No.4:

While working at our Ahmedabad Main Branch, Shri Solanki opened a Savings Bank Account No. 742283 jointly with his wife Smt. Tarlika T. Solanki and Smt. Sujata Mohanlal Solanki.. During the period 1990-1991 while working at this Branch, Shri Solanki negotiated various cheques on different dates, drawn upon various other Banks and other Branches of our Bank. The total amount of cheques discounted by Shri Solanki through this account was Rs. 2,06,000/- which Shri Solanki managed to remove the same from the Branch. The other relevant record pertaining to these transactions were also removed by him. This way Shri Solanki have duped the Bank with an amount of Rs. 2,06,000/- and tampered the record to facilitate himself for committing this fraud."

5. After recording a finding into the guilt of the petitioner, the disciplinary authority issued a show cause notice to the respondent proposing penalty of discharge from service. The respondent in his reply represented that he be reinstated in service with some lesser punishment which may provide to him and his family some succor and an opportunity to live with respect in the society. However, looking to the nature of the misconduct, the disciplinary authority awarded punishment of discharge from the bank's service with superannuation benefits as would be due otherwise at that stage and without disqualification from further employment.

6. The respondent workman, being dissatisfied with the award and quantum of the punishment, preferred an appeal to the appellate authority. This time, the appellate authority, confirmed the findings and the quantum of punishment awarded by the disciplinary authority.

7. The respondent workman, thereafter, approached

the learned Labour Court. Present petitioner appeared before the Labour Court and submitted that present was not a case fit for interference, because, serious charges were leveled against the workman, the workman having admitted his guilt would not be entitled to challenge the quantum of punishment. The parties were allowed to lead evidence, the learned Labour Court, in its impugned award held that the inquiry was proper, there was no violation of the regulations governing the inquiry and due and appropriate opportunity to defend was given to the present respondent. During pendency of the Reference, the present respondent made an application under Section 11A of the Industrial Disputes Act, 1947 and made a submission to the Labour Court that he was admitting his guilt and in view of his fair admission, the Court should interfere in the quantum of punishment. The learned Industrial Court, despite holding that the inquiry was valid, readily conceded to the application filed by the respondent and held that the respondent should be given one

opportunity for improvement; that the Labour Court/Industrial Court have sufficient and wide powers to interfere in the question of quantum of punishment and present was a case fit for interference. The Industrial Court accordingly set aside the order of discharge from service and directed that the respondent be reinstated in service at his original posting but however, without back wages.

8. Shri Pranav Desai, learned counsel for the petitioner-Bank submits that looking to the nature and gravity of the charges, as the bank is not ready to bank upon such employee and as the bank is not ready and willing to repose any confidence in such person, the bank would always be justified in showing the exit to such employee. He submitted that in a case like present where an employee commits breach of various rules, opens accounts in different banks, removes cheques and negotiable instruments from the envelopes, then, continuation of such person with the bank would not only adversely affect the work of the bank

but may even bring disrepute to the bank. He submitted that present is not a fit case where the learned Industrial Court could have interfered in the matter.

9. Shri Nilesh I. Pandya, learned counsel for the respondent, however, raised a novel plea. He submitted that as the first order of remand was absolutely illegal, the disciplinary authority could not take up the matter afresh. He submitted that present is a case of double jeopardy, because, on the first occasion, the respondent was removed from the services after condonation of the lapses but on the second occasion, he was discharged from the services. He submitted that if the order of remand was patently illegal, then, the order of punishment would also become illegal. He also submitted that present was a fit case where the Court was required to interfere in the matter.

10. So far as the question of authority's power to remand the matter to the disciplinary authority is concerned, even if I hold that under the Shastri Award, such power is not vested in the

appellate authority, then, the order passed by the appellate authority ought to have been challenged by the present respondent before the appropriate Court or Forum. On one side, the workman wanted to receive the benefits from the said order, because, the said order had set aside the penalty imposed against the respondent and at the same time, he wanted to say that the disciplinary authority would have no jurisdiction to start afresh. If the appellate authority could not remand the matter back to the disciplinary authority, then, the first punishment would stand. The respondent cannot be allowed to say that the first punishment stands nullified because of the order passed by the appellate authority and the second punishment is illegal, because, the authority could not remand the matter. Conduct of the respondent is writ large. He is blowing hot and cold at the same time. If one wants to rely upon an order, then, he has to observe the full order, he cannot be allowed to say that he would pick up sweet and leave the sour.

11.After the remand, the disciplinary authority gave an appropriate opportunity to the respondent and recorded findings into the guilt, the disciplinary authority found each and every charge proved and despite present being fit case for sacking the respondent from the services, he was simply discharged by the disciplinary authority. It appears that as the respondent was all through pleading for mercy, the disciplinary authority simply discharged him and also protected his monetary benefits. The said order passed by the disciplinary authority was challenged by the respondent before the appellate authority. Before the appellate authority, question of remand was not raised. The respondent who had taken whole-hearted part in the proceedings, after the remand, was simply submitting that present was not a case fit for discharge. The appellate authority, however, confirmed the order of punishment made by the disciplinary authority.

12.Even before the Industrial Court, correctness, validity and propriety of the remand order was

not challenged. Remand proceedings were not challenged and the proceedings after remand were not challenged. The Industrial Court, however, held that the inquiry conducted by the bank was absolutely justified. Finding that the inquiry was valid, the respondent again made an application under Section 11A of the Industrial Disputes Act and tried to invoke discretionary jurisdiction of the Industrial Court on the ground that the punishment awarded to him was shockingly disproportionate to the misconduct committed by him.

13. The Industrial Court certainly has power to interfere on the question of quantum of punishment but such interference cannot be made in exercise of whim, caprice or arbitrariness. Once the Court proposes to make interference on the question of quantum of punishment, then, the order must be based on sound reasoning, legal foundation and other relevant material. In the present case, the learned Industrial Court has simply observed that the workman had made an application under Section 11A of the Industrial

Disputes Act, employee had admitted his guilt in the departmental inquiry and had also given a request application to the bank. The Industrial Court also observed that the applicant, at the time of his deposition on oath in the Court, had admitted his guilt and under such circumstances, the punishment imposed on the applicant-respondent would be excessive. I fail to understand the logic behind the finding that the punishment was excessive. If somebody, after committing misconduct pleads guilty, then, he does not challenge the charge, one can contest the case on the defences which are available to him or if he finds that he is absolutely defenceless, the case is open and shut, then, he may confess the guilt. Confession of misconduct and admission of the guilt may provide some solace to the delinquent but would not provide a reasonable legal and valid ground to the Court to make inference on the question of punishment. When the Court proposes to interfere on the question of punishment, then, it has to consider the nature and gravity of the charges; whether

charges, if proved, could lead to harsher punishment, whether misconduct was a result of *mens rea,* whether misconduct was willful or a mistake, whether in committing such act such delinquent was to be benefited and whether complainant or the employer was to suffer unnecessarily. Discretion cannot be exercised in air. When the Court wants to award lesser punishment, then, it is obliged to give reasons, the reasons must be germane to the matter before the Court, those must be sound, those must be logical and those must be an outcome of the mind of a prudent man. One cannot say that as he has powers to interfere, he would interfere every time. In a case where delinquent pleaded guilty even in the Court, ordinarily, there would be no reason for the Court to make interference on the question of punishment, however, if the Court proposes to exercise discretion available with it and also wants to exercise powers conferred upon it, then, the Court has to supply reasons which must appeal to all concerned. One cannot say that because

somebody had pleaded guilty and prayed for mercy, therefore, the case on hand would become a fit case for showing mercy. If the interference is absolutely illogical, irrational, is not in accordance with the powers conferred upon the Court, or is a result of a wrong approach to the legal provisions or the facts, then, exercise of such discretion can always be condemned before the appellate forum.

14. In the present matter, nature of the charges were that the workman had withdrawn money from his accounts knowing well that there were no sufficient funds; he misled the authorities by negotiating majority of the cheques in small amounts of Rs. 2500/- to avoid getting authorisation of appropriate authority; the charge was that contrary to the rules; he opened accounts at various branches of other banks to facilitate his illegal motive of committing fraud; as a Dispatch Clerk, he surreptitiously removed the instruments/cheques and replaced them with some innocuous documents and while working at Ahmedabad Main Branch, he opened

Saving Account No. 742283 jointly with his wife and Smt. Sujata Mohanlal Solanki; he negotiated various cheques on different dates drawn upon various other banks, the total amount of cheques discounted by the respondent through his other accounts was Rs. 2,06,000/- which he had withdrawn through other accounts. The cheques so discounted by the respondent did not reach the drawee bank as he managed to remove the same from the bank. If these are the charges and the guilt is admitted, then, I do not think that present would be a fit case where any mercy could be shown against the delinquent.

15. If one cannot bank upon an employee, specially in a case where there is fiduciary relationship, specially where workman is holding post of the Accountant, specially when a workman is holding the post of Dispatch Clerk, then, it would always be better to ask the workman to walk out of the exit so that the workman may remain happy outside the bank and the bank can still win confidence of the public.

16. For the reasons aforesaid, I must hold that the

learned Industrial Court acted with illegality and absolute invalidity by making interference in the order of punishment.

17. The order passed by the Industrial Court deserves to and is accordingly quashed, however, there shall be no costs. Rule is made absolute accordingly.

18. In view of the final disposal of Special Civil Application No. 8493 of 2000, no orders on Civil Application No. 5097/04 are required.

[R.S. GARG, J.]

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